IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

NO._____

L. C. PRICHARD,
Petitioner

vs.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

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L. C. Prichard prays that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Fifth Circuit, entered in the above entitled cause on December 19, 1946 (order denying motion for a rehearing entered January 22, 1947), affirming the orders and judgments of the District Court of the United States for the Northern District of Georgia which overruled petitioner's motions for a judgment of acquittal.

ORDERS AND JUDGMENTS BELOW

The order and judgment of the court overruling petitioner's motions for a judgment of acquittal appears in

the record at pp. 75, 92. The opinion of the Circuit Court of Appeals appears in the record at p. 103.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 19, 1946 (R. 104), and the order denying a rehearing was entered January 22, 1947 (R. 107). The jurisdiction of this court is invoked under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Was the evidence sufficient to authorize the conviction of petitioner?

STATUTE INVOLVED

The statute involved is Sec. 88 of Title 18, U. S. C.; Criminal Code, Sec. 37; Revised Statute, Sec. 5440, and will be found in the Appendix, infra, p. 10.

STATEMENT

Petitioner was indicted at the November Term 1944 by a United States Grand Jury in and for the Newnan Division of the Northern District of Georgia. The indictment only contained one count and charged a conspiracy to violate the various provisions of the Internal Revenue Laws. Petitioner went to trial on April 4, 1946 and on April 5, 1946 the jury returned a verdict finding him guilty as charged. On April 10, 1946 the court committed petitioner to the custody of the Attorney General for a period of eighteen months (R. 18).

The pertinent facts, as disclosed by the evidence, are

substantially as follows:

Petitioner was jointly indicted with five other persons. All of the defendants were present and went to trial except one. The court entered a judgment of acquittal for Corbett Wilson Prichard (R. 76). The jury found the other defendants who were on trial guilty. The evidence upon which petitioner was convicted was entirely circumstantial. The evidence focused around a distillery in Haralson County, Georgia and around another distillery located in Douglas County, Georgia. Petitioner was never seen at either one of these distilleries and there is no evidence of probative value to connect him with these distilleries or with any defendants or co-conspirators. Petitioner was not shown to have known any of said convicted parties except Ernest Pruitt who took the stand and absolved petitioner of any blame in the case. The government obtained petitioner's conviction on purely suspicious circumstances which were refuted by direct and positive testimony of Ernest Pruitt.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the District Court of the United States did not err in refusing to grant petitioner's motion for a judgment of acquittal based on the ground that the evidence was insufficient to warrant his conviction.

2. In not reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The question involved is whether the evidence was sufficient to warrant the conviction of petitioner.

Manifestly, the evidence (which was purely circumstantial) is as consistent with innocence as it is with guilt. The few circumstances which furnished the basis of petitioner's conviction amount to nothing more than conjecture and speculation. These circumstances do not point conclusively to his guilt. He was never seen at either one of the distilleries. No association is shown between petitioner and the other alleged conspirators, except Pruitt had worked on petitioner's farm prior to the distilling operations. E. B. Gray testified that he saw one of the Prichards with a load of syrup, but was not certain which one. Willie Prichard, a brother of the petitioner, testified that it was he who was hauling the syrup. This load of syrup was never shown to have any connection with the distilling operations. Ernest Pruitt testified positively concerning the suspicious circumstances lodged against petitioner. Pruitt assumed full responsibility for the distilling operations, and absolved petitioner of any responsibility and of any participation. No attempt was made to impeach Pruitt.

It is a well known principle of law that a conviction is not authorized where the evidence is as consistent with innocence as it is with guilt.

The Fifth Circuit Court of Appeals has held:

> "Where circumstantial evidence is relied on, circumstances proved must not only point to guilt, but must be inconsistent with innocence."
>
> *De Luca vs. United States*
> 298 F. 412 (4) (5 CCA)

The Fifth Circuit Court of Appeals also held in a very recent case:

> "Where circumstantial evidence is relied upon to

sustain a conviction, the inferences that may be drawn from the evidence must not only be consistent with guilt but inconsistent with every reasonable hypothesis of innocence."

Strickland vs. United States
155 F. (2d) 167 (1) (5 CCA)

The same thing was held in the following cases:

Candler vs. United States
146 F. (2d) 424 (4) (5 CCA)

Wright vs. United States
227 F. 855 (8 CCA)

The prosecution must prevail on the strength of its own case and not on the weakness of that of the defendant.

United States vs. Laffman
152 F. (2d) 393 (2) (3 CCA)

United States vs. Bennett
152 F. (2d) 342 (4) (2 CCA)

Wright vs. United States
227 F. 855 (Supra)

The mere presence of a person at or near a distillery is not a sufficient circumstance to authorize a conviction.

The Fifth Circuit Court of Appeals has also held:

"The mere presence of Copeland at the still that was raided would not be sufficient to show that he was either proprietor of or engaged in operating the still."

Copeland vs. United States
90 F. (2d) 78, 80 (5 CCA)

The Third Circuit Court of Appeals has held:

"Evidence that defendants were at or near premises where a still was in operation, and that they

had in their possession some sandwiches, old clothes, and a hydrometer of the type used in testing the specific gravity of mash or alcohol from mash held insufficient to sustain conviction for possession of unregistered still for the manufacture of mash."

Girgenti vs. United States
81 F. (2d) 741 (3 CCA)

This court (3 CCA) also held:

"Evidence that the defendant was at, or near an illicit still, will not in itself justify a conviction."

Grunwald vs. United States
94 F. (2d) 952 (3) (3 CCA)

The Fifth Circuit Court of Appeals in a case charging a conspiracy held:

"Circumstances which merely raise suspicion or give room for conjecture, are not sufficient evidence of guilt. Wharton, on evidence, p. 1532. A conviction resting on them alone cannot stand."

Kassin vs. United States
87 F. (2d) 183, 184 (4) (5 CCA)

The Sixth Circuit Court of Appeals held the same.

Dennert vs. United States
147 F. (2d) 286 (3) (6 CCA)

Guilty knowledge of an illegal transaction is not sufficient to authorize a conviction.

Mazurosky vs. United States
100 F. (2d) 958,961 (9 CCA)
citing the Copeland case, supra.

The Second Court of Appeals has stated the rule cogently:

"There is no magic about a count charging a conspiracy. It is simply an accusation of a distinct crime, and evidence in support of it must be so clear and convincing as to leave no reasonable doubt."

United States vs. Silva
131 F. (2d) 247, 249 (2 CCA)

See also

Moss vs. United States
132 F. (2d) 875, 876 (16) (6 CCA)

Philyaw vs. United States
29 F. (2d) 225 (8 CCA)

Inferences arising from circumstances cannot be substituted for circumstances to prove guilt.

Gerson vs. United States
25 F. (2d) 49, 51 (18) (8 CCA)

See also

Shannabarger vs. United States
99 F. (2d) 957 (4 and 5) (8 CCA)

The proximity of a still to a defendant's farm, and the fact that he rode up to the distillery while it was being raided, and a remark was made by one of the operators about the defendant's horse, was insufficient.

Reavis vs. United States
93 F. (2d) 307 (5) (10 CCA)

Mere suspicion and conjecture are insufficient to warrant inference of guilt.

Graceffo vs. United States
46 F. (2d) 852 (3 CCA)

The testimony of Ernest Pruitt clearly explained and refuted each one of the circumstances which raised a

suspicion that the petitioner might have been guilty of the acts charged in the indictment. He testified that he and Rube Reeves owned the distilleries; that petitioner had no interest in them; that petitioner was not at the distillery in Haralson County early in the morning on the day of the arrests; that Rube Reeves was the third man who agreed to go after breakfast; that he (Pruitt) purchased the cotton that was used in caulking the distillery; that he (Pruitt) paid Argo $65.00 for the cow, and that he obtained the money from Rube Reeves; that the petitioner did not furnish any material used in the manufacture of liquor; and that petitioner was in no way connected with any of the transactions. This testimony was not disputed or contradicted. No effort was made to impeach Pruitt. Therefore Pruitt's testimony must be taken as true. It must be believed. The jury had no right to disregard it.

The Tenth Circuit Court of Appeals has held:

> "Generally, where unimpeached witnesses testify positively to a fact and are not contradicted, their testimony should under ordinary circumstances be credited and have the effect of overcoming presumption."
>
> *Rosenberg vs. Baum*
> 153 F. (2d) 10 (6) (10 CCA)

The Eighth Circuit Court of Appeals has held:

> "Testimony of witnesses whose credibility was not questioned, and was not impeached or contradicted cannot be disregarded."
>
> *San Francisco et al vs. Industrial et al*
> 152 F. (2d) 532 (8 CCA)

The Fifth Circuit Court of Appeals has adopted this rule of law.

Mutual Life Insurance Co. vs. Sargent
51 F. (2d) 4 (7) (5 CCA) and citations at p. 6

Alabama T. & T. Co. vs. Millsap
71 F. (2d) 518 (5), 520 (5 CCA)

Sutton vs. United States
131 F. (2d) 108

In conclusion, we respectfully submit that the evidence introduced by the Government merely raised conjecture, surmise and speculation. It did not point conclusively to petitioner's guilt. The inferences based upon this unsatisfactory evidence had no probative value but even so, they were fully explained by Ernest Pruitt, who was in possession of the true facts. The judgment should be reversed.

Respectfully submitted,

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APPENDIX

Section 88 of Title 18 U. S. C.; Criminal Code Sec. 37 provides:

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both. (R. S. Sec. 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, Sec. 37, 35 Stat. 1096.)"